



U.S. Department
of Transportation

**Federal Railroad
Administration**

Memorandum

Date: February 3, 2004

Reply to Attn of: OP-04-23

Subject: Part 219 - Monitored Urine Collections

From: Edward W. Pritchard
Director, Office of Safety Assurance and Compliance

To: Regional Administrators

This memorandum transmits a letter to Mr. Sales of Amtrak explaining FRA and DOT policy relative to monitored urine collections. Please distribute to your operating practices specialists and inspectors.

Attachment

Mr. William W. Sales, Jr.
Director, Human Resources
Operations - West
National Railroad Passenger Corporation
60 Massachusetts Avenue, N.E.
Washington, D.C. 20002

April 6, 1992

Dear Mr. Sales:

This is in response to your November 8, 1991, letter addressed to Mr. Jim Schultz regarding "monitored" urine collections during random drug testing situations. You expressed concern over apparent conflicting information being provided regarding this issue by the Department of Transportation (DOT) and the Federal Railroad Administration (FRA). I have, therefore, consulted with Donna R. Smith, Ph.D., Senior Analyst with DOT's Drug Enforcement and Program Compliance Section, to ensure a consistent reply to your questions.

Let me start by saying that it is FRA/DOT's joint opinion that Title 49, Code of Federal Regulations (49 CFR), Part 40 intends to permit monitored collections (collector standing outside stall, but inside restroom) when multiple stall or urinal facilities are used. For example, if a restroom facility has multiple sinks, urinals, and toilets, the task of securing the water supply (by shutting-off valves, blueing tanks and bowls, or taping faucets, etc.), is admittedly a time consuming and difficult one. Thus, using only one stall and being able to monitor the donor's access to other toilets, sinks, urinals, etc., is appropriate.

With that in mind, I will respond to each of your four questions below:

Question 1: ". . . what distinguishes a "public" restroom. . . ?"

Response: In the context of the rule outlined in Part 40, a "public restroom" refers to a facility used by employees, the public, clinic/hospital patients, etc., for purposes other than specimen collection. In other words, it is not a "dedicated specimen collection facility." While in use for specimen collections, such facilities, used by other employees or the public at other times, must be secured.

Question 2: ". . . what measures are necessary to secure a collection area. . . urinals . . . water faucets. . . lockers. . . ?"

Response: Room Security: To secure a facility, certain actions must be taken, to include restricting room access only to the donor and collector; securing or controlling water sources and soap; blueing toilet tanks/bowls with blueing agent; and removing from the room anything that could adulterate a specimen (e.g., disinfectants, solvents, cleaning solutions, etc.).

Urinal Security: Securing a urinal is difficult with tape. Generally speaking, a urinal can only be effectively secured by flushing, then shutting-off the water supply with a shut-off valve and removing the flush handle.

Taping of Faucets: The taping of water faucets can be effective if tamper proof tape and duct or other strong water resistant tape is used.

Lockers: Lockers alone would not make a collection site “unsecured.” However, lockers should not be openly accessible to a donor if items that could be used to adulterate or substitute a specimen might be contained therein.

Question 3: “. . . at what point does it become impractical to secure a collection room? Doesn’t this interpretation permit significant - and overboard - discretion. . . if so, to whom does that discretion belong. . .?”

Response: As noted in the first question above, it is generally impractical to secure facilities with multiple toilets, sinks, or urinals, that are used for purposes other than urine collections. In such situations, monitored collections are an acceptable alternative. This interpretation requires that railroads make a reasoned and good faith attempt to secure facilities when feasible. FRA inspectors will look at each case on its own merits, and make an evaluation whether the railroad exercised due diligence to secure a facility in accordance with the requirements.

Question 4: “If there is a preference against monitored collections, what prevents a railroad from designating only collection rooms that cannot practicably be made secure. . . . thereby defeating the regulations?”

Response: The right of privacy in providing a urine specimen is a fundamental privilege to be withdrawn only under specific circumstances (observed collections). It is incumbent upon employers to provide collection sites that afford as much donor privacy as practical while still ensuring the security of such sites. When impractical to use a dedicated, secure facility for a urine collection, then the monitoring provision would be employed.

In summary, FRA and DOT expect employers to comply with the intent of the regulation by providing secure, acceptable collection rooms. If monitoring a collection is required to guarantee such security because a facility is multi-use with several stalls, sinks or urinals, or for other valid reasons, then FRA would not consider this an exception to regulatory intent.

I hope these responses have answered your questions regarding the FRA’s and DOT’s interpretive approach to monitored collections. I regret any earlier conflicting guidance you have received on this issue, and hope you will feel free to contact me if you have any additional questions.

Signed by Grady C. Cothen, Associate Administrator for Safety.